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Attorneys for Plaintiff
 Sierra Club

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

SIERRA CLUB,
 Plaintiff,

vs.

UNITED STATES DEPARTMENT OF
 ENERGY,
 Defendant.

)
) Case Number: 3:19-CV-02246-LB
)
) **JOINT CASE MANAGEMENT**
) **STATEMENT & [PROPOSED] ORDER**
)
)
) Date: July 25, 2019
)
) Time: 11 am
) Location: Courtroom B, 15th Floor
) Phillip Burton Federal Building
) 450 Golden Gate Avenue

) San Francisco, CA 94102

)

Hon. Laurel Beeler

Pursuant to the April 25, 2019 Order (Dkt. 7), the Parties submit this joint case management statement in advance of the upcoming July 25, 2019, case management conference.

1. Jurisdiction & Service

Plaintiff Sierra Club (“Plaintiff”) asserts jurisdiction in this Freedom of Information Act (“FOIA”) action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331. Defendant U.S. Department of Energy (“Defendant”) has been served.

2. Facts

Plaintiff alleges that Defendant has failed to comply with the FOIA by failing to produce agency records responsive to one FOIA request HQ-2018-1467-F, which consists of four parts. (Dkt. 9-2). The request generally relates to Bernard McNamee, who is currently a Commissioner at the Federal Energy Regulatory Commission, and concerns the scope of his activities during his employment as a senior DOE official as well as his engagement with other DOE officials during an intervening period between his two periods of employment with DOE. Defendant received a request from Plaintiff dated August 13, 2018, and Defendant sent an interim response to Plaintiff on August 17, 2018. (Dkt. 9-4). By the interim response, Defendant granted Plaintiff’s request for a fee waiver and denied Plaintiff’s request for expedited processing, but did not produce any responsive documents or specify a timeframe for doing so.

On April 25, 2019, after not receiving any responsive documents, Plaintiff filed a complaint alleging that Defendant violated FOIA by failing to make a final determination or produce records in response to Plaintiff’s request within the timeframe required by statute. On June 28, 2019, Defendant released a partial response to Plaintiff’s request. In that initial response, DOE

1 produced the non-exempt portions of 19 documents, consisting of a total of 345 pages. All of
2 those documents are responsive to parts 1 and 4 of Plaintiff's request. The Parties have
3 determined and agreed that there are no records responsive to part 2 of the Request and,
4 together, they are working to prioritize the agency's search, review, and production of
5 additional documents responsive to part 1 of the Request. DOE has determined that there are
6 no responsive documents to part 3 of the Request.

7
8 Defendant states that it continues to work to complete its response to Plaintiff's FOIA request.
9 As of the date of filing, Defendant has identified approximately 15,000 documents potentially
10 responsive to part 1 Plaintiff's request. Defendant does not yet know the exact page count
11 associated with the approximately 15,000 documents, which may include pages that Defendant
12 ultimately determines are not responsive or are duplicates of pages already produced.
13 Defendant continues to explore other ways to further focus the search results and is discussing
14 proposals with Plaintiff on an ongoing basis.

15
16 3. Legal Issues

17 Plaintiff's Complaint for Declaratory and Injunctive Relief raises a number of issues,
18 including:

- 19 (1) whether Defendant violated FOIA, 5 U.S.C. § 552, by failing to produce records in
20 response to Plaintiff's FOIA request;
21 (2) whether Plaintiff is entitled to declaratory and injunctive relief; and
22 (3) whether Plaintiff is entitled to litigation costs and reasonable attorneys' fees in this action.
23

24 4. Motions

25 The parties anticipate that any issues that cannot be resolved between the parties will be
26 submitted to the Court via joint letter brief or cross-motions for summary judgment. Such
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28

1 issues may include whether Defendant has conducted an adequate search for responsive
2 records; the propriety of any claims by Defendant that any records, or portions thereof, are
3 exempt from disclosure; and the timeliness of Defendant's productions.

4 5. Amendment of Pleadings

5 At this time, the Parties do not anticipate amending the pleadings.

6 6. Evidence Preservation

7 The parties certify that they have reviewed the Guidelines Relating to the Discovery of
8 Electronically Stored Information ("ESI Guidelines"). The parties acknowledge their duty to
9 preserve relevant materials in accordance with applicable rules and case law.

10 7. Disclosures

11 At this time the Parties do not anticipate the need for discovery in this FOIA action and
12 respectfully request that the Court excuse the parties from the exchange of initial disclosures
13 pursuant to Federal Rule of Civil Procedure 26.

14 8. Discovery

15 The Parties do not anticipate the need for discovery in this FOIA action at this time. The Parties
16 note that discovery is generally limited in FOIA actions. *See Lane v. Dep't of Interior*, 523 F.3d
17 1128, 1134 (9th Cir. 2008) (noting that discovery is limited in FOIA cases "because the
18 underlying case revolves around the propriety of revealing certain documents").
19

20 9. Class Actions

21 Not applicable.

22 10. Related Cases

23 None.

1 11. Relief

2 Plaintiff seeks declaratory and injunctive relief with respect to the search, release, and
3 disclosure of requested agency records, as well as attorneys' fees and costs.

4 Defendant states that Plaintiff is not entitled to any relief.

5 12. Settlement and ADR

6 The Parties are amenable to Settlement discussions and ADR. After a production schedule is
7 determined, the Parties plan to further discuss when ADR and/or Settlement discussions might
8 be prudent and what kind of ADR would be most useful (private mediator or magistrate
9 judge). The Parties will relay their agreements to the Court in the next case management
10 statement.

11 13. Consent to Magistrate Judge For All Purposes

12 The Parties have consented to United States Magistrate Judge jurisdiction in this case.

13 14. Other References

14 This case is not suitable for binding arbitration, a special master, or the Judicial Panel on
15 Multidistrict litigation.

16 15. Narrowing of Issues

17 The Parties are working collaboratively and productively to resolve their disputes to the greatest
18 extent possible, such that any dispute/s presented to the Court would be narrow.
19
20

21 16. Expedited Trial Procedure

22 Not applicable.

23 17. Scheduling

24 The parties have met and conferred and are working to focus DOE's search for responsive
25 documents through the use of agreed search criteria. The Agency will apply the new search
26 criteria to the documents collected and will report back to Plaintiff. The Agency will work as
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28

1 diligently as possible to develop a production schedule, including an end production date,
2 which will depend on number and type of records collected.

3 18. Trial

4
5 At this time, the parties expect that any disputed issues will be resolved on joint letter brief or
6 cross-motions for summary judgment and do not anticipate the need for trial in this FOIA
7 action.

8 19. Disclosure of Non-party Interested Entities or Persons

9 Pursuant to Civil L.R. 3-15, Plaintiff certifies that as of this date, other than the named parties,
10 there is no such interest to report.

11 This requirement does not apply to Defendant.

12 20. Professional Conduct

13
14 All attorneys of record for the Plaintiff and Defendant have reviewed the Guidelines for
15 Professional Conduct for the Northern District of California.

16 21. Other

17 None at this time.

18
19 Dated: July 16, 2019

DAVID L. ANDERSON
United States Attorney

20 /s/ Kimberly A. Robinson
21 KIMBERLY A. ROBINSON
22 Assistant United States Attorney
23 Attorneys for Defendant

24 SIERRA CLUB
25 /s/ Cassandra McCrae
26 CASSANDRA MCCRAE
27 KIM SMACZNIAK
28 Attorneys for Plaintiff Sierra Club

CASE MANAGEMENT ORDER

The above JOINT CASE MANAGEMENT STATEMENT & PROPOSED ORDER is approved as the Case Management Order for this case and all parties shall comply with its provisions. [In addition, the Court makes the further orders stated below:]

IT IS SO ORDERED.

Dated:

MAGISTRATE JUDGE LAUREL BEELER